IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

WRIT PETITION NO.192 OF 2005

The General Manager. ...Petitioner.
Vs.
Gopinath S. Nadekar & Anr. ...Respondents.

....

Mr. R. R. Shetty for the Petitioner.
Mr.S. N. Deshpande for Respondent No.1.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

November 16, 2006.

P.C.

On the petition being restored to file, the petition has been, by consent, taken on Board for admission and is called out.

2. The Industrial Tribunal by its award dated 17th September 2002 held that the domestic enquiry conducted against the workman was not in accordance with the principles of natural justice and that the finding of the Enquiry Officer was perverse. The Part-I Award was challenged in writ proceedings before this Court under Article 226 of the Constitution (W.P. 7995 of 2003). The petition was dismissed on merits and a Learned Single Judge of this Court (Smt.Nishita Mhatre, J.) confirmed the finding in the Part-I Award by a Judgment and Order dated 11th December 2003.

3. Since the enquiry was held not to be fair and proper, it was open to the employer to seek an opportunity to lead evidence before the Industrial Tribunal to substantiate the charge of misconduct. The employer did not seek such an opportunity either in the Written Statement or for that matter, thereafter. In that view of the matter, the Industrial Tribunal by its Part-II Award dated 26th May 2003 granted reinstatement with full back wages. In fact, it would appear that the Part-II Award had already been passed by the time the Learned Single Judge was moved on 11th December 2003 in a challenge to the Part-I Award.

4. The present proceedings were instituted before the Court on 30th September 2004. In the meantime, the workman had, on 27th August 2003 and 18th December 2003, issued a notice through his Advocate seeking compliance of the Award and thereupon moved the Assistant Labour Commissioner under Section 29 of the Industrial Disputes Act, 1947. The ALC (Central) issued a notice to the Petitioner on 7th January 2004. In July 2004 the workman instituted Contempt Petition 306 of 2004 before this Court. On 10th June 2005, a statement was made on behalf of the

Petitioner to the effect that the workman has been reinstated and that payment of back wages would be effected within a period of four weeks. The Contempt Petition was accordingly allowed to be withdrawn. The workman was accordingly reinstated and payment of full back wages was made.

5. In view of the law laid down by the Supreme Court in **Union of India vs. Narender Singh**,[1] the Writ Petition questioning the order of the Tribunal on merits does not become infructuous by the employer having given effect to the order. The Supreme Court held that a Writ Petition would not be rendered infructuous only because an order of reinstatement has been implemented. In the circumstances, the substantive challenge to the final award of the Tribunal has been considered by this Court in the present proceedings though the order has been implemented. On merits, no fault can be found in the final award of the Industrial Tribunal. The enquiry was held to be vitiated by non-compliance with the principles of natural justice in the Part-I Award. The Part-I Award was confirmed on merits by a Learned Single Judge of this Court on 11th December 2003 in W.P. 7995 of 2003. The Petitioner

1 2005 SCC (L&S) 815

failed to seek an opportunity to lead evidence to substantiate the charge of misconduct and it is an admitted position that no such request was made before the Tribunal either in the Written Statement or thereafter. The request now made on behalf of the Petitioner to remit the matter back to the Tribunal cannot be granted for the reason that the request to permit the Petitioner to lead evidence to substantiate the charge of misconduct ought to have been made at the appropriate stage before the Tribunal. Having regard to the settled position in law, no request having been made, the order of the Tribunal cannot be faulted. In any event, the Respondent-workman has already been reinstated and has been paid full back wages as directed by the Tribunal. No other submission has been urged before this Court other than that the matter should be remitted to enable the employer to lead evidence afresh. For the reasons already indicated, the submission cannot be accepted. There is no merit in the petition which is accordingly dismissed.